



Express Mail No.: EL 451 594 763 US

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of: Weinrich et al.

Application No.: 08/785,559

Group Art Unit: 2779

Filed: January 17, 1997

Examiner: T. Havan

For: METHOD AND APPARATUS FOR  
CONSTRUCTING A NETWORKING  
DATABASE AND SYSTEM

Attorney Docket No.: 9933-003-999

**RENEWED PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT**

Assistant Commissioner for Patents  
BOX DAC  
Washington, D.C. 20231

**RECEIVED**

**AUG 22 2000**

**OFFICE OF PETITIONS**

Sir:

This is to request reconsideration of the Decision of the Patent and Trademark Office (PTO) mailed on May 31, 2000 concerning the above-identified application. This Decision dismisses a Petition for Correction of Filing Date that was filed by Applicants on June 17, 1999. The Decision indicates that applicants' Petition was treated as a Petition to Withdraw a Holding of Abandonment for the above-identified application.

The Decision states that the above-identified application became abandoned on May 1, 1999 for failure to file a timely response to a non-final Office Action mailed on October 30, 1998. May 1, 1999 was a Saturday.

The Decision further states that applicants' petition for a three month time extension, an amendment and several other items were filed on May 1, 1999. In addition, a postcard receipt for the petition for time extension, amendment and other items submitted bears the PTO date stamp of May 1, 1999. Thus, applicants' response to the Office Action of October 30, 1998 was in the hands of the PTO no later than Saturday, May 1, 1999. In accordance

with 37 C.F.R. 1.136(a)(2), applicants' response to the Office Action and the petition for three month extension of time were due no later than Friday, April 30, 1999.

Applicants request reconsideration of the PTO's decision for the following reasons:

Applicants' Petition was apparently dismissed because petitioner did not provide sufficient evidence to the PTO of the date the response was deposited with the United States Postal Service (USPS). However, if a response was received by the PTO from the USPS on Saturday, May 1, 1999, it must have been deposited with the USPS no later than the previous day, April 30, 1999, which was the due date for submitting the response and petition for extension of time.

Petitioner has been faulted for failing to obtain a copy of the Express Mail mailing label at the time of deposit. Unfortunately, such a copy was not obtained. Moreover, when the petitioner learned that it did not receive the April 30, 1999 filing date, a request was made to the USPS for a copy of the U.S. Express Mail mailing label as stated in the attached Declaration of Josephine B. Hardy. However, as also reported in the attached Declaration of Josephine B. Hardy, a copy of the Express Mail mailing label was never received.

A further reason for dismissal of the Petition appears to be a belief that the correspondence was deposited with the USPS "subsequent to the last scheduled pickup for that day". However, it is evident from the fact that the response was received by the PTO on May 1, 1999 that the response could not have been deposited with the USPS subsequent to the last scheduled pickup on April 30, 1999. Indeed, the US Post Office at 8<sup>th</sup> Avenue and 32<sup>nd</sup> Street at which the response was deposited is the James A. Farley General Post Office for New York City. Its windows are open and staffed 24 hours per day, 7 days per week, for the receipt of mail. See attached Declaration of Josephine B. Hardy.

A further reason given in the Decision dismissing the Petition relates to a postcard receipt bearing the legend "MAIL DATE CANCELED" in red. It is not understood why this supports the Decision. Rather, this seems to be merely a statement of what happened with no explanation whatsoever as to why it happened. Moreover, it is not clear what postcard receipt the Decision is referring to since the copy of the postcard receipt in petitioners' possession does not bear this legend. A copy of the postcard receipt in petitioners' possession is attached to the Declaration of Francis E. Morris submitted herewith. Petitioner suspects that the

receipt referred to in the Decision is a copy of the postcard receipt that is made by and retained by the PTO and that the legend "MAIL DATE CANCELED" was affixed by the PTO.

A further statement is made that the petitioners' "petition and affidavit are dated 17 June, 1999" but "have been stamped as received on 16 June, 1999, by the PTO". Petitioner does not understand how this statement supports dismissal of the petition. In any event, a copy of the Express Mail mailing label used to submit the petition and affidavit on June 17, 1999 is attached to the Declaration of Francis E. Morris submitted herewith. Please note that the Express Mail tracking numbers on the postcard receipt, on the petition and on the Express Mail mailing label are the same. Please note the date stamp of the USPS indicating receipt of the document on June 17, 1999. It is respectfully submitted that the PTO's receipt date appears to be in error.

Petitioner submits that this state of facts satisfies the requirements of 37 C.F.R. 1.10(d) for according a filing date of April 30, 1999 to Applicants' response. In particular,

- (1) Applicants' Petition for Correction of Filing Date was filed on June 17, 1999, promptly after petitioner learned that an incorrect filing date had been assigned;
- (2) The Express Mail number was affixed to the applicants' response and accompanying documents as is evident from the documents; and
- (3) The Declaration of Josephine B. Hardy to the effect that she deposited applicants' response and accompanying items in Express Mail on April 30, 1999 before the last scheduled pickup for the day is corroborated by the PTO's receipt of the response on May 1, 1999, the following day.

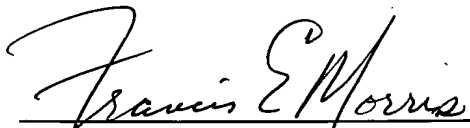
In summary, since there is no question that Applicants' Response and Petition for Extension of Time was received by the PTO no later than May 1, 1999, it must have been submitted to the USPS no later than April 30, 1999 which was in the time period permitted for response to the Office Action dated October 30, 1998. Accordingly, Applicants' petition should be granted and the holding of abandonment should be withdrawn and the application passed to issue.

In view of the amount of time spent in consideration of Applicants' initial Petition, Applicants respectfully request expedited consideration of this Renewed Petition.

No fee is believed due for filing of this Renewed Petition. Should any fees be due, however, please charge such fees to Pennie & Edmonds LLP Deposit Account No. 16-1150.

Respectfully submitted,

Date August 11, 2000

  
Francis E. Morris 24,615  
(Reg. No.)  
PENNIE & EDMONDS LLP  
3300 Hillview Avenue  
Palo Alto, CA 94304  
(650) 493-4935

Enclosures

Express Mail No.: EL 451 594 763 US

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Weinreich et al.

Application No.: 08/785,559

Group Art Unit: 2771

Filed: January 17, 1997

Examiner: T. Havan

For: Method and Apparatus for  
Constructing a Networking  
Database and System

Attorney Docket No.: 9933-003-999

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AUG 22 2000

Declaration of Josephine B. Hardy

OFFICE OF PETITIONS

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

I, Josephine B. Hardy, declare and state:

1. I am an employee of Pennie & Edmonds LLP and was secretary to Francis E. Morris, attorney of record, at the time of the events related below;
2. I have previously submitted a Declaration dated June 17, 1999 in support of a Petition for Correction of Filing Date. The filing date in question is the filing date of a response I deposited with the James A. Farley General Post Office in New York City on April 30, 1999;
3. When I learned that the response did not receive the April 30, 1999 filing date, I requested from the USPS at the James A. Farley General Post Office, a copy of the US Express Mail label for the package that I had deposited with the USPS on the evening of April 30, 1999. I was told by the USPS representative that a copy of the mailing label would be sent to me. However, I never received this mailing label.
4. The James A. Farley General Post Office is located between 31<sup>st</sup> and 33<sup>rd</sup> Streets on 8<sup>th</sup> Avenue in New York City. Its windows are open and staffed, 24 hours per day, 7 days per week, for the receipt of mail. On numerous occasions in the past several years, I have deposited Express Mail at the

Express Mail window in this Post Office, at times as late as shortly before midnight.

I hereby declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that I make these statements with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date August 11, 2000

  
\_\_\_\_\_  
Josephine B. Hardy



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For: Method and Apparatus for  
Constructing a Networking  
Database and System

Attorney Docket No.: 9933-003-999

Declaration of Francis E. Morris

Assistant Commissioner for Patents  
BOX DAC  
Washington, D.C. 20231

**RECEIVED**

**AUG 22 2000**

**OFFICE OF PETITIONS**

Sir:

I, Francis E. Morris, declare and state that:

1. I am the patent attorney prosecuting the above-identified application. My Registration Number is 24,615.
2. Attached hereto as Exhibit A is a copy of the postcard receipt for the response mailed on April 30, 1999 relating the above-identified application. This postcard receipt bears the stamp of the PTO and the date of May 1, 1999;
3. Attached hereto as Exhibit B is a copy of the postcard receipt for the Petition for Correction of Filing Date that was mailed on June 17, 1999. This receipt bears the stamp of the PTO and the date of June 16, 1999; and
4. Attached hereto as Exhibit C is the Express Mail label for the Petition for Correction of Filing Date that was mailed on June 17, 1999. This label bears the handwritten date of "6/17/99" in the upper lefthand corner and the stamp of the Grand Central Station Post Office in the bottom righthand corner, indicating a receipt date of June 17, 1999. Please note that the Express Mail number, EM 061 021 392 US on the Express Mail label, on the postcard receipt, and on the Petition are the same.

I hereby declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that I make these statements with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date August 11, 2000

  
\_\_\_\_\_  
Francis E. Morris